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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No 74-331

STANLEY V. TUCKER,
Petitioner

-v-

MARGIE J. THRELKELD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

STANLEY V. TUCKER
Box 35
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PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered May 3rd, 1974. Timely Petition for Re-Hearing was filed and denied June 27th, 1974

CITATION TO OPINIONS BELOW

The opinions below are not reported to the best information and belief of Petitioner.

The opinion of the Ninth Circuit Court of Appeals is printed in the Appendix hereto, Appendix A1 is the denial of the Petition For Re-Hearing and Appendix B1 is the Opinion on the Appeal. Appendix C1 is the Judgment appealed in the District Court, and Appendix D1 is the Order Made in the District Court Denying Motion to Vacate Summary Judgment, separate appeals were filed but one record prepared in the 9th CA, separate briefs were filed but only one Opinion (with captions and numbering for both appeals) was filed by the 9th CA.

JURISDICTION

The Petition for Re-Hearing was denied June 27th, 1974. Appendix A1. The jurisdiction of this court is invoked under 28 USC 1254(1).

QUESTIONS PRESENTED

1. Was the Petitioner's random exercise of first amendment freedoms over about ten years in California including visits to his children and litigation in state and federal forum to vindicate their rights an "activity" basis for purposes of "long arm" personal jurisdiction?

2. Is incurring of an alleged "judgment debt" in California an "activity" within the meaning of decisions by the U.S.Supreme Court for purposes of "long arm" personal jurisdiction?

3. Where respondents in the District Court in California failed to have summons served by the Federal MArshall as required by FRCP Rule 4c are all subsequent proceedings null and void for lack of jurisdiction?

4. Where Petitioner filed counterclaims in the District Court directly interacting with the complaint upon which the district court granted summary judgment is the judgment only "interlocutory" and not "final" for purposes of execution and appeal by reason of failure to comply with the FRCP Rules 21, 42, 54 and 56.

5. Where the state court purported judgment upon which this action is based was upon a series of alleged malicious prosecutions wherein this Petitioner suffered dismissal for inability to post security cash bonds was the state judgment void as in violation of due process as pronounced by this Court in Boddie v Connecticut? 401 US 391.

6. Where years approaching a decade went by between the alleged torts in California can they now be an "activity" basis?

7. Should this action be remanded for trial on the facts relevant to the "activity" basis and for trial on the counter-claims never ruled upon?

8. Does the factual record fail to support the Opinion of the 9th CA?

9. Is Respondent's affidavit in support of Summary Judgment irrelevant to the merits?

CONSTITUTIONAL AND STATUTORY PROVISIONS

First Amendment - US Constitution:

> "Congress shall make no law..... abridging .... the right of the people to assemble , and to petition the government for redress of grievances."

California Long Arm Statute Civil Code of Procedure Section 410.10.

"A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States"

See West's Annotated California Codes

(comments by Judicial Council on next page)

Comment—Judicial Council

BASES OF JUDICIAL JURISDICTION

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FACTUAL BACKGROUND OF THIS CASE

Respondent is former wife of Petitioner and both lived in peace in the east for about twelve years as man and wife and in 1955 moved from the east coast to California and immediately fell into difficulties with mother of Respondent, mother-in-law to Petitioner.

Respondent commenced a series of divorce proceedings starting about 1956 and culminating in a divorce about 1960. In attempting to visit his three minor children Petitioner was repeatedly harrassed and sometimes suffered verbal abuse or attack.. or children concealed in other cities or counties with relatives of the Respondent.

Repeatedly Petitioner was forced to go into divorce courts for trivial and false contempts of court of an emotional or hysterical nature.

Tiring of the constant litigatious attitude and greatly concerned over the permanent damages being done to the minor children Petitioner deeded to Respondent valuable income property in Sherman Oaks California in exchange for the right to have his children with him in the East summers and in California when on vacation or visiting.

The years from 1961 to about 1969 were bitter and harsh. Accepting the deeds the Respondent refused to compy with child vacations or visitation in California. Repeated litigations against this Petitioner took place in Connecticut and California including many trivial criminal prosecutions all dismissed. About 40 actions or proceedings were instituted in state or federal forums against this Petitioner.

Tiring of constant harassment and litigation and continuing interferences with his children and continuing damages to the children this Petitioner filed counter suits and civil suits against Respondent and/ or her relatives or attorneys.

FACTUAL BACKGROUND OF CALIF STATE JUDGMENT

In one of the actions in state courts the Respondent filed counter-claims alleging

malicious prosecution for prior actions which Petitioner has initiated and had been dismissed for failure and inability of Petitioner to post cash security bond ordered by the California state court.

This litigation was prior to the decision of this court in Boddie v Conn. 401 US 391 and without benefit of the follow-on cases.

Petitioner in the state court timely claimed the case for the jury and paid the jury fee but was denied a trial by jury.

Petitioner timely filed disqualification of the trial judge (Appendix F1) under mandatory disqualifications statute CCP 170.6 but the disqualification was ignored and the trial judge proceeded to render a harsh adverse default judgment against Petitioner.

THUS PETITIONER CONTENDED THAT THE STATE COURT JUDGMENT WAS VOID AND IN VIOLATION OF FUNDAMENTAL FEDERALLY GURANTEED RIGHTS TO A JURY AND TO A FAIR AND IMPARTIAL JUDGE.

FACTUAL BACKGROUND OF FEDERAL PROCEEDINGS

Almost two years after rendering of the state judgment Respondent filed in the District Court of California (not Conn. where Petitioner resided since 1961) a diversity action on the state judgment.

This was not a "tort"action on the alleged torts (failure to post cost security bond in state court actions) and indeed the alleged torts were about 1965 and 1967 or a decade old as of this writing.

An ex parte application was made in the district court for order permitting out of state service of summons but a FATAL BLUNDER TOOK PLACE - the summons was not served by the Federal Marshall as required FRCP Rule 4 c but by a private person as permitted under the state codes.

Petitioner filed an Answer denying the allegations of the complaint and Special Defenses as to the denial of a jury and denial of disqualification by trial judge and counter-claims as follows:

First Counter-Claim: Petitioner sought declaratory relief that the Affidavit of Disqualification (Appendix F1) was valid and timely and all acts of the state court judge null and void.

Second Counter-Claim: Petitioner sought declaratory relief that the California statute (CCP 391) under which earlier actions of Petitioner had been dismissed for inability to post security cash bond was unconstitutional under the rule in Boddie, supra. In this counter-claim Petitioner set forth the requirement for a three-judge district court.

Third Counter-Claim : Petitioner sought declaratory relief that the California long arm statute under which service was made in this action was unconstitutional and void.

Summary Judgment: The trial court granted summary judgment on the complaint without any ruling on the counter-claims and without the rulings required by FRCP Rules 21, 42, 54 & 56.

Petitioner appealed to the 9th CA which upheld the lower court and thus this Petition For Certiorari.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

Since this Court's decision in International Shoe v Washington 326 US 310 (1945) there has been a nation wide flood of state "long arm" statutes. As of this writing only nine states do not have a "long arm" statute. Eighteen states have a carefully defined or "limited" long arm statute. Twenty-three states have a "generalized long arm statute and California is in this group adopting its long arm statute in July 1970.

CALIFORNIA ALONE OF ALL THE STATES HAS A "LONG ARM" STATUTE WITHOUT ANY DEFINITION AT ALL.

As a result the decision below is a welter of contradictions and conflicts with the

decisions of the UNITED STATES SUPREME COURT and conflicts with decisions of other Circuit Courts of Appeal and repeatedly violates or ignores fundamental federally guaranteed rights and/or statutory requirements as set forth in the FEDERAL RULES OF CIVIL PROCEDURE.

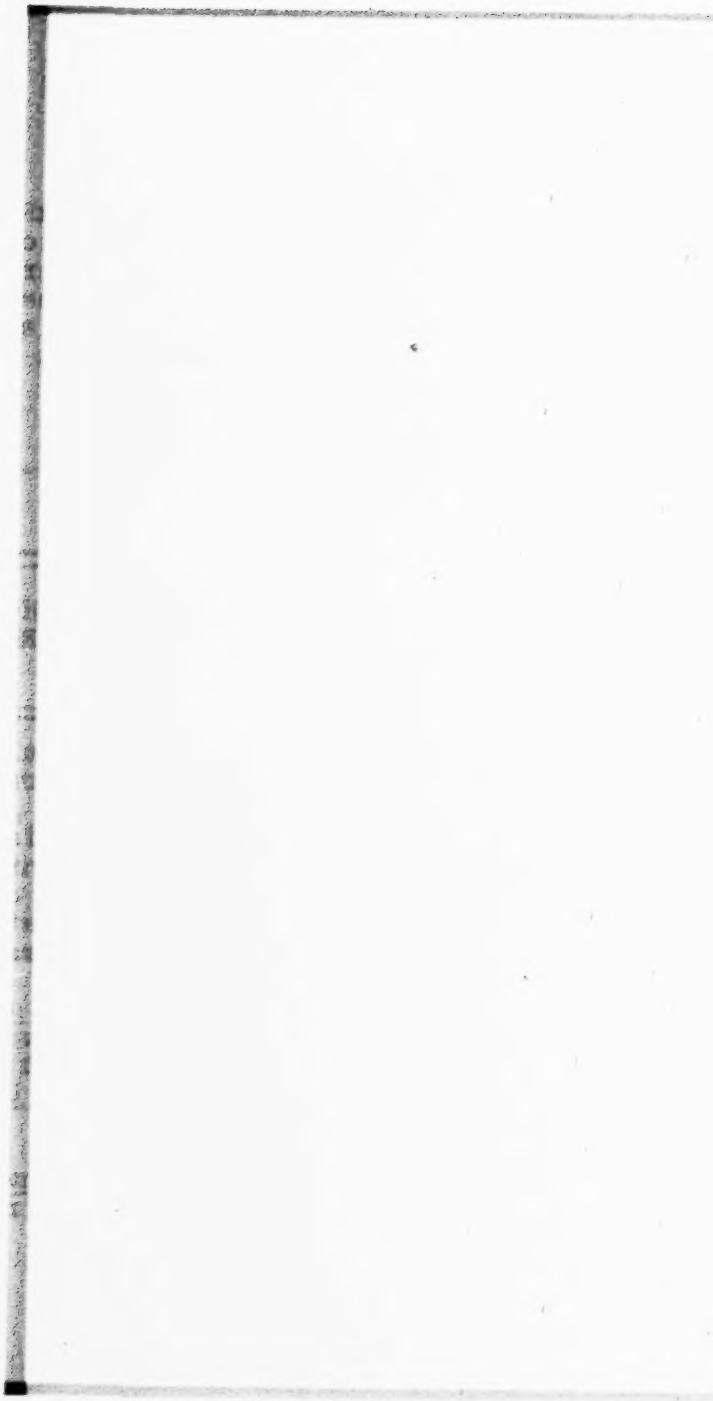
Truly this is a case that should be summarilly reversed or carefully reviewed on the merits.

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPRME COURT

The Petitioner's activities in Califoria have been non-existant for five years and for eight years prior to the five (going back a total of 13 years) have consisted of random exercise of first amendment freedoms consisting of visiting his children, writing letters and seeking justice by petitioning the courts for redress of grievances.

These first amendment activities do not meet the minimum activities test of International Shoe v Washington 326 US 310 (1945).

The U. S. SUPREME COURT in International Shoe, supra, established a flexible rule for determining jurisdiction.



"It is evident that the criteria by which we mark the boundary line between those activities which justify this objection of a corporation to suit and those which do not cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through itsagents in another state, is a little more or a little less..... Whether due process is satisfied must depend rather upon the quality and the nature of the activity, in relation to the fair and orderly administration of the laws of which it was the purpose of the Due Process clause to insure. That clause does not contemplate that a state may make a binding judgment in personam against an individual or corporate defendant with which the state has no contacts or relations."

It was noted by the Supreme Court in McGee v International Life Insurance Co 355 US 220 a trend of expanding jurisdiction over a nonresident. However in Hanson v Denckla, 357 US 235, the High Court still recognized there were limits to this expansion:

> "But it would be a mistake to assume that this trend heralds the eventual demise of all restrictions on personal jurisdiction of a state court (cites). Those restrictions are more than a guaranty of immunity from the inconveinience of distant litigation They are a consequence of territorial limitation on the power of the respective states. However minimal the burden of defending in a foreign tribunal

"a defendant may not be called upon to do so unless he has had the "minimal contact"..... It is essential in each case that there be s ome act by which the defendant purposefully avails him self of the proviledge of conducting activities within the forum State, thus invoking the protection of its laws"

The very casualness of Petitioner's exercise of fundamental first amendment freedoms to visit his minor children residing in California is attested to by Respondent in her attorney's affidavit filed in the District Court in support of issuance of out -of - state summons.

> "Defendant visited California regularly from 1961 to 1969 up to several times a year"

PETITIONER SUBMITS SO OBVIOUSLY DO HIS ACTIVITIES FALL OUTSIDE THE SCOPE OF ACTIVITIES REQUIRED FOR JURISDICTION BY DECISIONS OF THE UNITED STATES SUPREME COURT THAT THE ORDER BELOW SHOULD BE SUMMARILLY REVERSED AND THE COMPLAINT DISMISSED FOR LACK OF PERSONAL JURISDICTION.

> "It has generally been recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there."

St Clair v Cox 106 US 350
Old Wayne Life Assn v McDonough
204 US 8, 21
Frene v Louisville Cement Co
134 F 511

II. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE CIRCUIT COURTS OF APPEAL

The decision in the 9th CA while containing vague contentions such as.....

Appendix B 5 : "The claim here sued on is but one step removed from a diversity action upon a tort"

.....nevertheless a reader must conclude that the 9th CA used as a basis the prior litigation carried out nine and seven years earlier and all resulting in dismissals for inability to post security cost bonds.

II A. THE 4TH CA HAS EXPLORED AND REJECTED A MULTIPICITY OF LITIGATIONS AS AN ACTIVITY BASIS 1966

Dragor Shipping Corp v Union Tank Car Co
361 F 43 at P 44:

"participation in litigation in courts of state does not constitute doing business with in state so as to subject litigant to in personam jurisdiction of courts in state"

Dragor at P 45 :

> "Dragor's sole contention on appeal is that the Arizona District Court's assumption of jurisdiction over the person of Dragor and thereby over the subject matter of this action deprived Dragor of due process, and is therefore unconstitutional."

This Court is reminded of Petitioner's contentions herein being identical to those of Dragor in Arizona.

The Dragor cases involved extended litigation in the courts of Arizona between the same parties. A stipulation was signed for settlement payment of $1,000,000 and the federal cases dismissed. Payment was not made. New suit was started based on prior litigation in Arizona. The 4th CA stated that the prior litigation was without constitutional significance and lacking the necessary constitutional connections. See McGee, supra.

Dragor P 48: "4,5. In McGee, supra, no activity apart from or antecedent to the contract was relied upon by the court in holding that the contract sued upon was sufficiently connected with the forum state to satisfy due process requirements. It would not be correct, however, to say that such activity will

"never be relevant in establising the necessary minimum contacts. A contract upon which suit is brought may bring into issue prior dealings between the parties in the forum state, and these dealings may well provide a basis for jurisdiction. But where the agreement sued upon is in the nature of a settlement of existing claims, and the only issues presented relate to its breach and not its validity, we think the antecedent dealings without constitutional substantial connection"

Dragor P 49: "6.9. The execution and delivery of the note took place in New York and so could not, in any eventhave significance where the inquiry concerns activity in the forum state. The stipulations dismissing the Arizona suits were executed in New York but filed in Arizona. Such filing was long prior to Sept 30, 1964 when, Union assets, Dragor committed the breeches sued upon. The filing of the dismissal constitutes an isolated act having no legal significance in this law suit. It does not provide a substantial connection of the kind referred to in McGee"

Without a doubt following the reasoning of the Dragor court the filing of dismissals in the California actions nine

and seven years ago based upon inability to post security cost bond does not.....

"Provide a substantial connection of the kind referred to in McGee"

II B. THE DECISION BELOW CONFLICTS WITH RECENT KEY DECISIONS IN OTHER DISTRICT COURTS

See the March 25th, 1974 Federal Supplement P 1366 Munchak Corp v Riko Enterprises Dec 21, 1973 USDC N. CAROLINA.

Muncak, supra, rejected litigation as a permissible constitutional jurisdictional basis P 1366:

"presence in a state solely to participate in litigation is not, by itself, sufficient connection with that state to make a person amenable to the state's jurisdiction"

The Muncak Plaintiff argued that the defendant "controlled" the litigation thus there was alleged necessary "activity". See how this claim was rejected in North Carolina. P 1369:

"2. Plaintiff contends that defendant controlled the defense of the earlier action brought in this Court by Plaintiff against Cunningham, in-

> cluding the payment of costs. Although defendant denies that it "controlled" the litigation, there is no dispute as to the defendant's participation in that action on Cunningham's behalf. In either event, presence in a state solely to participate in litigation is not, but itself, sufficient connection with that state to make a person amenable to the state's jurisdiction. See Dragor, supra. Moveover, to so hold might conflict with traditional immunity principles designed to further the orderly administration of justice. See Vol 4 Wright and Miller, Federal Practice and Procedure Sec 1076."

On the strength of the Munchak and Dragor courts the 9th CA opinion holding that the dismissals nine years ago for in-ability to post security cost bond was a form of "tort" permitting exercise of California's newly enacted "no holds barred" long arm statute must be rejected and this action reversed and the complaint dismissed.

Munchak P 1374: "True, the defendant engages in a widely dispersed entertainement activity. However, unlike the "stream of commerce" fact setting the injuries alleged in this lawsuit did not result from this activity of the defendant. The agent of the harm was not the defective product. Nor can this case be brought within constitutional limitations when the unrelated activities of defendant are considered"

Without the slightest shadow of a doubt the claim pressed by Threlkeld in the District Court was on an alleged state court judgment debt, one Petitioner claims is void for lack of due process, and totally unconnected with the actions dismissed nine and seven years ago for inability to post security cost bonds.

SURELY McGEE, DRAGOR AND MUNCHAK ALL MANDATE THE JUDGMENT BELOW MUST BE REVERSED AND THE COMPLAINT DISMISSED FOR LACK OF IN PERSONAM JURISDICTION.

II.C. THIS ACTION IS NOTHING MORE OR LESS THAN A SHABBY ATTEMPT TO USE THE FEDERAL COURTS TO BILL COLLECT A STATE COURT JUDGMENT DEBT

The federal courts are not bill collectors for the state courts yet without a doubt that is exactly what the lower courts have been doing in this action despite mumbo-jumbo language attempting to avoid the thrust of the clear and undisputed facts.

9th CA Opinion Appendix B 4 :

> " It is argued that the present action is notone arising directly from Tucker's liability-producing conduct in California (repeated litigation) but rather is one arising out of a California judgment."

9th CA Opinion Appendix B 5 :

> "We emphasize that this action *is not* an attempt to use a federal court or federal process to enforce a state judgment"

Hollow words, indeed, by the 9th CA! This action is precisely a shabby attempt to ruthlessly and illegally use a federal forum deliberately picked as far remote from Petitioner to obtain at great conveinience to Respondent a state court judgment converted into a federal judgment for bill collection purposes.

Compare the simple language in the complaint, the skimpy one sentence statment of claim that reveals in its stark simplicity its nature as a bill collection vehicle and compare with the mumbo-jumbo used by the 9th CA.

Complaint in USDC:" 2. On June 26, 1970 in an action in the Superior Court of the State of California County of Ventura, a judgment was duly entered in favor of plaintiff and against defendant in the sum of $46,852.50"

The cow webs and snake talk in the 9th CA opinion swept aside, the decisions below must be reversed and the complaint dismissed as no mumbo-jumbo can convert a bill collection to a "tort", especially when the tort (?) is nine years old and

consists of no more nor less than the inability to post security cost bond a matter which the U. S. SUPREME COURT in Boddie supra has held to be a denial of due process and unconstitutional and not a tort at all.

II D. STATE FORUMS AND CALIFORNIA HAVE LONG REJECTED LITIGATION AS AN "ACTIVITY" LONG ARM BASIS

Long the leading case in Collar v Penninsular Gas Co the Missouri Supreme Court rejected malicious prosecution as an activity basis. 295 SW 2d 88.

Collar P 88: "The Supreme Court held that a foreign corporation was not "doing business when it merely prosecuted action in state"

Collar P 91: "No cases have been cited and our research has disclosed none wherein the courts hve discussed the effect of filing a suit insofar as such relates to the issue of "doing business". However, it seems well settled that engaging in litigation and the compromise and collection of debts do not constitute "doing business"

In Painter v Colorado Springs etc 104 SW 1139 An agent of a foreign railroad while investigating a claim for damages was served with summons and complaint and the Missouri court refused to uphold jurisdiction. See also Nathan v Planter Cotton 174 SW 126, 23 Am Jur Sections 370 Foreign Corporations, P 353, 354

The effect of the federally protected right to litigate on the permissability of evidentiary use of prior litigation was faced squarely in the Florida District Court of Appeal (Oct 1969) Zabner v Howard Johnson 227 So2d 543. In this case prior litigation was used for attacking the credibility and held improper for reason as follows:

> "To determine litigiousness to be the proper subject of cross examination for impeachment purposes would be tantamount to stating one creates a legal wrong by enforcing one's rights when they are violated. Such would be a gross infringement upon the basic rights. The great Justice Cardozo once stated that to enforce one's rights when they are violated is never a legal wrong and may often be a moral duty"

See;

a. Grenadier v Surface Transport 271 App Div 460 NY
b. Ryan v Int Harvester 204 Minn 177

A most noteworthy case applicable to facts herein involved Mr Titus of Mass. who wrote letters to California, and litigated or negotiated and conducted legal affairs with his ex-wife, resident of California, in regard to his minor children domiciled in California.

The California state court refused personal jurisdiction "in personam" over Mr Tutus on grounds such "legalistic" activities were not activities within the rule contemplated by the U. S. Supreme Court when the due process limits were set for state and federal courts to follow in International Shoe, Supra.

Titus v Superior Court
100 Cal Rpt 477

> "father's relationship with California was primarilly a legalistic one"

III. THE JUDGMENT IN THE DISTRICT COURT IS VOID DUE TO DEFECTIVE SERVICE WHICH SHOULD HAVE BEEN MADE BY THE FEDERAL MARSHALL FRCP RULE 4 c

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FRCP RULE 4 c ""Service of all process shall be made by a US Marshall or some person especially appointed by the court for that purpose"

The recent case from the 9th C. A. of Veek v Commodity Enterprises, 487 F 2d 423, unequivocably settled this question under a factual background remarkably analageous to this action.

Veek P 425 "(1,2) The district court was persuaded that the mandatory language of Rule 4 c could be circumvented by Veeck's sylogistic argument. We disagree. When personal service of original process is made pursuant to Rule 4 e it must be made by a person specified by Rule 4 c. See 2 J. Moore, Federal Practice S4.08 at 1009 - 1011 (2nd ed 1970); 4 Barron & Holtzoff, Federal Practice and Procedure S1092 at 353 (Wright ed 1969) cf U. S. for Use of Tanos v St Paul Mercury Ins Co 361 F 2d 838 (CA 5th 1966). Accordingly since Howes was not a person specified by rule 4 c he lacked proper authority to serve the district court's summons upon the appellants."

The affidavit of service of Robert R. Anderson, attorney for respondent, filed in the 9th CA record contains a master piece of understatement:

" I charge no fee for such service"

If a fee had been charged by the U. S.

Marshall a proper service would have resulted. As the facts undisputably stand in this action Attorney Anderson just like Howes in Veeck , supra.....

> "... was not a person specified by Rule 4 c, he lacked proper authority to serve the district court's summons"

Veeck P 426: "(4) The district court's lack of in personam jurisdiction over the appellants renders void its default judgment against them. Pennoyer v Neff 95 US 714, Accordingly the district court should have granted their motion to set aside that void judgment. Ruddies v Auburn Spark Plug Co 261 F Supp 648, FRCP 55c & 60b4."

Without question the factual and legal pattern of Veeck, supra, fit this case and on Veeck alone this Court is justified in summarilly reversing the decision below and remanding with instructions to dismiss the complaint for lack of "in personam" jurisdiction.

THE FATAL BLUNDER OF APPELLEE IN FOLLOWING THE STATE LAW IN SELECTION OF PERSON TO MAKE SERVICE RATHER THAN COMPLIANCE WITH THE MANDATORY FEDERAL RULE IS FATAL AND CANNOT BE CORRECTED AT THIS LATE DATE.

That the federal rules have statutory affect and must be followed or due process is denied and the resulting judgment is invalid is concurred in by the 5th C.A.

US FOR THE USE OF TANOS v ST PAUL
5th CA 1966 361 F 2d 838

"the rules of federal procedure have statutory effect"

See Moores Fed Practice 2nd Vol 7 Ch 69 S 60.04.

The 10th CA has also concurred with the above rulings by 9th and 5th C.A.

Rumsey v George E Failing Co
10th CA 1964 333 F 2d 960

"FRCP have force and effect of statute"

Yet the proceedings below repeatedly ruthlessly violated FRCP by violation of Rule 4c as developed above and by violation of Rules 21, 54,42 & 56 as developed below in Point IV Pages 30 to 35 .

THE DENIAL OF DUE PROCESS BY VIOLATION OF STATUTORY RULES IS GROUNDS FOR SUMMARY REVERSAL WITH INSTRUCTIONS TO DISMISS THE COMPLAINT.

IV. THE STATE COURT JUDGMENT IS VOID BECAUSE BASED ON "TORTS" CONSISTING OF DISMISSAL OF ACTIONS FOR INABILITY TO POST COST BOND. Boddie v Conn, 91 S Ct 780

The Respondent's state court judgment which is being collected or enforced in the federal courts in this action stems from six counter-claims filed in the Superior Court of Ventura. Petitioner timely claimed the case for the jury and timely paid jury fees but was denied a jury trial by a judge disqualified under a mandatory disqualification statute, CCP 170.6, Appendix F 1.

Because of the enormous size of the judgment rendered, $46,852, against the trivial damages calimed (for example in the first counter-claim damages of $125 for attorneys fees were alleged) there is no reasonable conclusion but that the trial judge disqualified by statute sought and obtained personal and malicious revenge against this Petitioner by issuance of a massive and unjustified judgment.

Only one judgment was issued on all six counter-claims and thus invalidity of most of the claims as being in conflict with congressional mandates or constitutional mandates for due process would invalidate the entire judgment. Two of the claims were based on failure to post cost bond security and others on failure

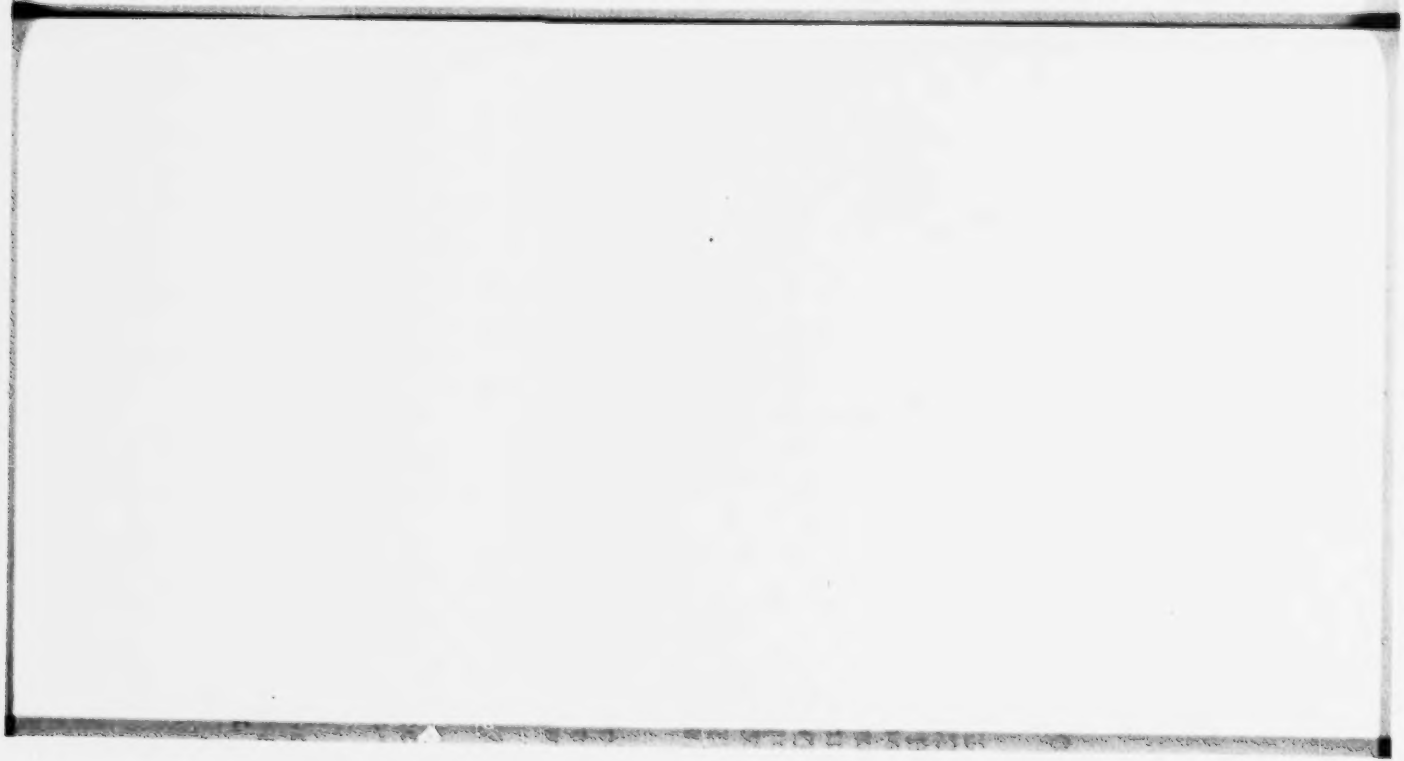
or inability to post filing fees or to post filing fees on time. Petitioner litingating in despirate necessity for the very lives of his children was in a classic FORUM NON CONVENIENS.

Typical of the claims was counter-claim four alleging damages of $465 in attorneys fees.....

Fourth Counter-Claim Para II : " On Sept 15, 1967, the action was terminated in defendant's favor by a judgment of dismissal for failure to post security..."

The action of the state judge, motivated by malice and disqualified for prejudice, was before this court's decision in Boddie v Connecticut, 91 S Ct 780. In Boddie the Supreme Court held it was a denial of due process to deny access to the courts by requiring payment of filing fees and sheriff's fees from potential divorcees on welfare who admittedly COULD SAVE UP THE FEES IN TIME BUT WERE DENIED ACCESS TO COURTS BECAUSE THEY LACKED FUNDS AT THAT VERY MOMENT.

THIS WAS THE CLASSIC DENIAL OF DUE PROCESS CONDITION IN WHICH PETITIONER IN CALIFORNIA WAS SUBJECTED TO AN UNCONSTITUTIONAL STATE JUDGMENT NOW BEING BILL COLLECTED IN THE FEDERAL COURTS.



Boddie P 792: "The rationale of Griffin covers the present case. Courts are the central dispute-settling institutions in our society. They are bound to do equal justice under law to rich & poor alike. They fail to perform their function in accordance with the Equal Protection Clause if they shut their doors to indigent plaintiffs altogether. Where money determins not merely "the kind of trial a man gets" Griffin v Illinois, 351 US at 19, but whether he gets into court at all, the great principle of equal protection becomes a mockery. A State may not make its judicial processes available to some but deny them to others simply because they cannot pay a fee. Harper v Virginia State Board of Elections 383 US 663. In my view Connecticut's fee requirement as applied to an indigent, is a denial of equal protection. "

Denial of Equal Protection

Boddie P 781: "Due process of law prohibits a state from denying, solely because of inability to pay court fees and costs access to its courts to indigents"

Denial of Due Process

The rationale of Boddie and Griffin fit the action below on all feurs. Boddie has never been reversed but has had many follow on cases in federal forums confirming and expanding. One of the follow on is:

Bell v Burson May 1971 29 L Ed 2d 90;

Georgia's motor vehicle safety law required uninsured motorists to post security upon a claim for damages due to accident or suffer loss of driver's liscence. The remarkable parallel to this action is that Petitioner in the state courts suffered dismissals of actions due to inability to post security cost bonds. Later it was claimed this failure to post security cost bond was "malicious prosecution" and judgment of $46,000 was secured against Petitioner.

The Bell court held the Georgia practice unconstitutional and so too on remand with instructions to conduct orderly proceedings in the District Court below on this Petitioner's counter-claim No 2 challenging the constitutionality of the California Security Cost Bond statute, CCP 391, a three-judge district court on strength of Bell and Boddie must hold the California statute unconstitutional and thus invalidate the state judgment which is being bill collected in the District Court below.

Both Bell and Boddie are powerful - very powerful arguments that the judgment below be summarilly reversed with instructions to follow the mandate of the due process and equal protection clauses.

V. IS THE JUDGMENT IN THE DISTRICT COURT "INTERLOCUTORY" AND NOT FINAL FOR PURPOSES OF APPEAL BY FAILURE TO FOLLOW FRCP RULES 21,42,54 & 56?

The events below in the district court are a matter of record and undisputed. This Petitioner filed three counter-claims that have never been litigated nor adjudicated. The 1st counter-claim challenged the validity of the state court judgment on grounds that the state judge was disqualified by statute, CCP 170.6. The serious federal question cannot be avoided in light of:

Mayberry v Penn January 1971 27 L Ed 2d 532

> "The circumstances ...deprive... the proceedings of the appearance of even handed justice which is the core of due process"

Six months later the U. S. Supreme Court affirmed and expanded this principle in:

Johnson v Mississippi June 1971 91 S Ct 1778

> "It is plain that he was so enmeshed in matters that it most appropriate for another judge to sit. Trial before "an unbiased judge" is essential to due process" Bloom v Illinois 391 US 194

The second counter-claim challenged the constitutionality of the security cost bond statute under which dismissals took place and upon which dismissals the judgment of $6,000 for "malicious prosecution" (?) took place and is now being "bill collected" in the district court below. The seriousness of this federal question is briefed above on pages 26 - 29 of this Petition. See Boddie, Bell and Griffin, supra.

The third counter-claim challenged the constitutionality of the California long arm statutue against which this entire Petition is based.

ALL OF THE THREE COUNTER-CLAIMS REQUIRED A THREE-JUDGE DISTRICT COURT, 28 USC 2281 and 28 USC 2284, AND THE DISTRICT COURT WAS WITHOUT DISCRETION TO ACT. A FAVORABLE RULING ON ANY COUNTER-CLAIM WOULD INVALIDATE THE JUDGMENT BELOW IN ITS ENTIRITY.

In Farley v Farley (3rd Cir 1973) the Third Circuit held that in a case calling for a three-judge court the single district judge is limited todetermining if a substantial federal question exists. There can be no doubt in light of cases briefed abve that the three counter-claims in this action constituted A SUBSTANTIAL FEDERAL QUESTION!

So granting summary judgment on the complaint in light of the requirement for a three-judge district court exceeded the jurisdictional limitations on the district court in this action.

See also Hannis Distilling Co v City of Baltimore (1910) 216 US 285.

See Idlewild Liquor Corp v Epstein (1962) 370 US at 715:

> "In the Stratton case it was held that a court of appeals was precluded from reviewing on the merits of a case which should have originally been determined by a court of three judges. Stratton does not stand for the broad proposition that a court of appeals is powerless ever to give any guidance when a single judge has erroneously invaded the provice of a three-judge court....."

On strength of above cases this court is requested to reverse and remand with instructions appropriate to conduct proper three-judge court proceedings on the counter-claims and thereafter proceed to the merits of the complaint, if any remains.

In this action consideration of the above status of the case must be made in light of the Federal Rules of Civil Procedure apparently violated by the District Court and/ or the litigants.

FRCP RULE 56 d: "If....judgment is not rendered upon the whole case.....it shall make an order..... directing further proceedings...."

In this action the judgment in the district court Appendix C1 is brazenly barren of the order required by FRCP Rule 56 d and Rule 21.

FRCP RULE 21: "Any claim may be severed and proceeded with independently"

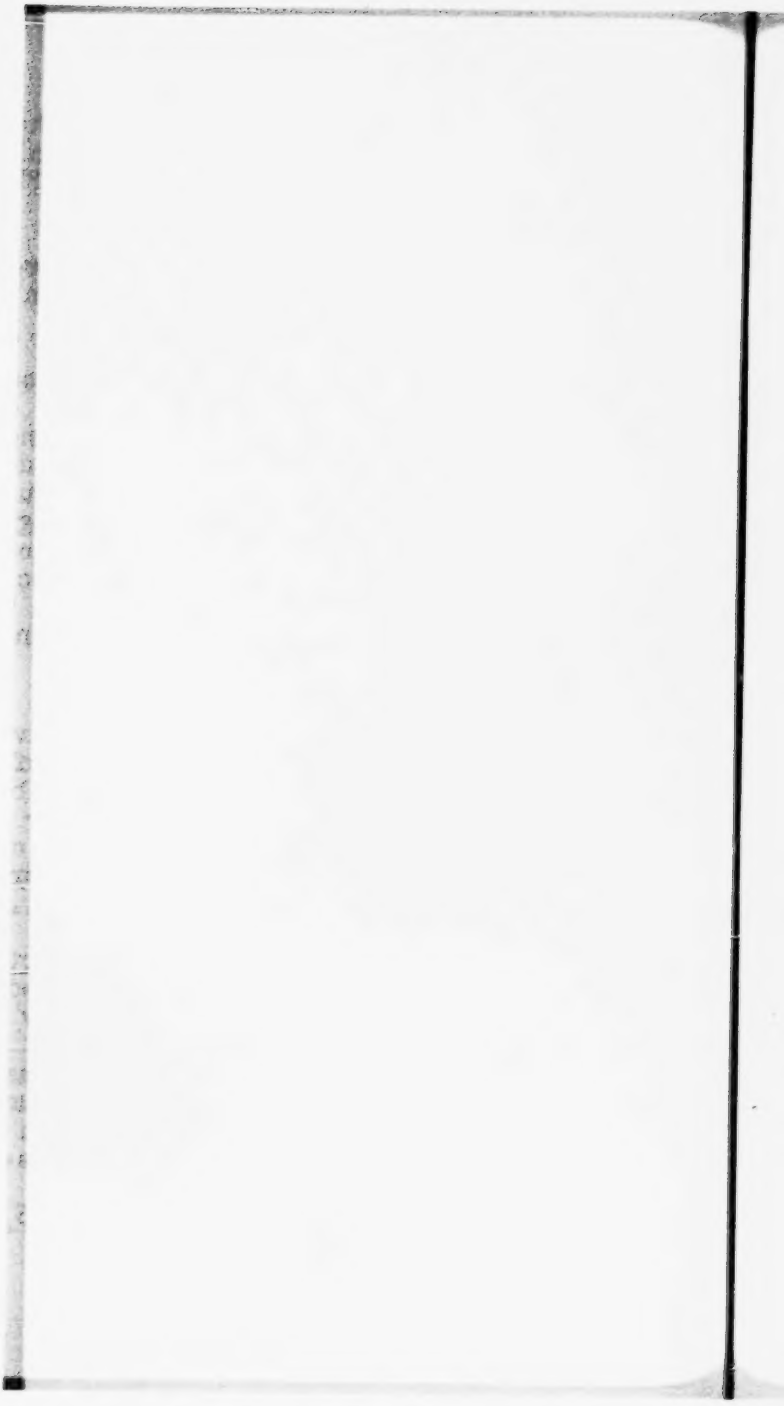
The record in the district court is brazenly barren of any Rule 21 order severing the action to proceed independently with complaint from counter-claims. Indeed such an order would itself be open to question in light of the obvious inter-relationships of the complaint and counter-claims since a favorable ruling on any of three counter-claims would invalidate in its entirety the complaint.

FRCP RULE 42: "When actions involving a common question of law or fact are pending before the court it may order joint trial..... to avoid prejudice it may order a separate trial....."

In this action the district court neither ordered a joint trial nor ordered a separate trial. Rule 42 was totally ignored.

Prior cases have ruled on circumstances where district judges ordered summary judgment without compliance with Rules 21, 42, 54 or 56. Such a case is:

Gillespie v Norris (9th CA 1956) 231 F 2d 881



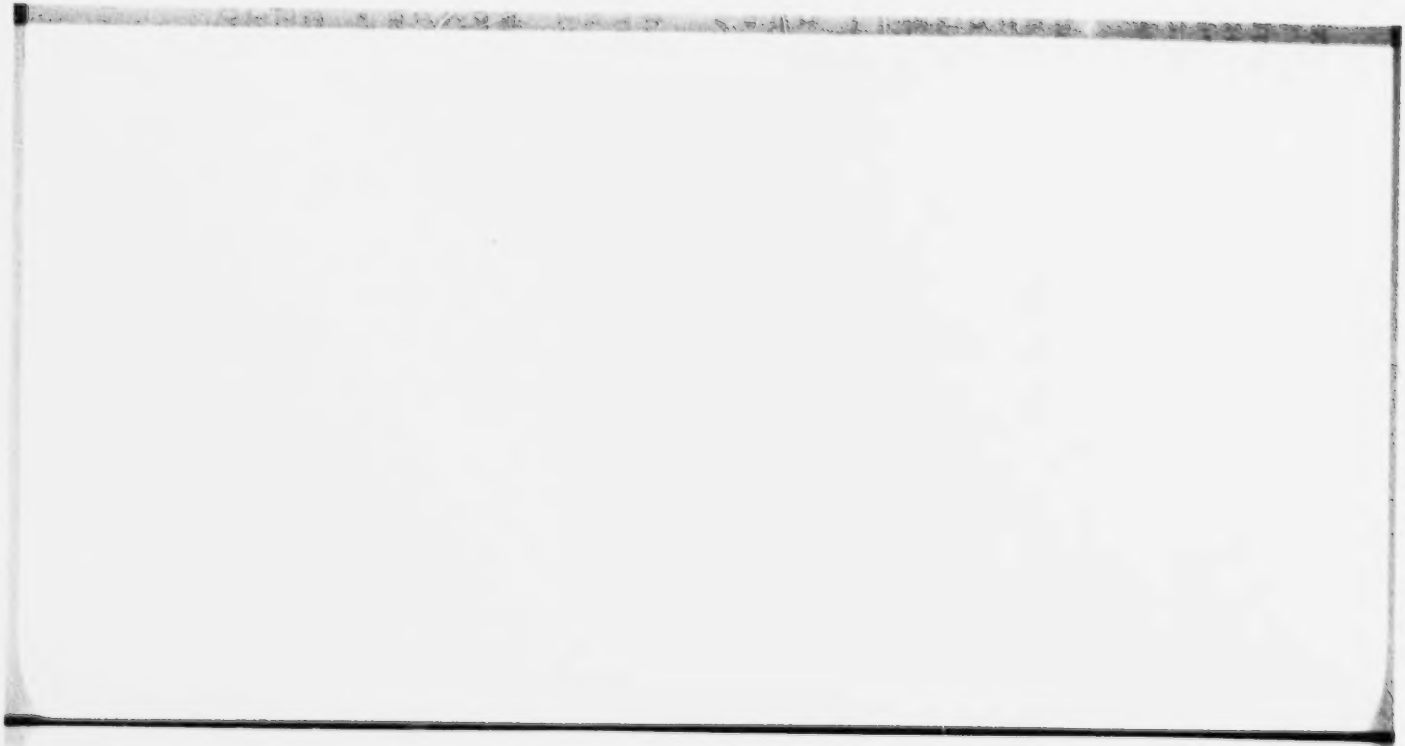
Gillespie P 883: "There is no order of the court disposing of these allegations of the counter-claim or the issues thereon, so far as the record before us discloses. The entire claim of Defendant was disregarded"

Gillespie P 884: "But it is obvious that the counterclaim and the issues thereon, if any, were not adjudicated by the trial court. Under such circumstances Rule 54b F.C.P. must be applied. Glens Falls Indemnity Co v American Seating Co 225 F 2d 838. The appeal is dismissed as premature. There was no finding that a partial judgment could be entered without embarrassment to the issue remainding unadjudicated"

In this action from sheer necessity this Petitioner was forced to appeal or be foreclosed as to valuable rights altho his counter-claims remained unlitigated

In addition in continuation of their pattern of malicious harrassment the Respondent and/or her attorneys have commenced filing of purported judgment liens on property of the Petitioner in Connecticut thus effectively immobilizing his business affairs.

ON STRENGTH OF ABOVE RECORD AND ESTABLISHED LAW THIS COURT IS ASKED TO DECLARE THE JUDGMENT IN DISTRICT COURT "INTERLOCUTORY" AND NOT FINAL FOR PURPOSES OF ENFORCEMENT AND/OR APPEAL.



FRCP RULE 54 b: "When more than one claim for relief is presented in an action.... the court may direct the entry of a final judgment as to one or more ONLY UPON AN EXPRESS DETERMINATION THAT THERE IS NO JUST REASON FOR DELAY AND UPON AN EXPRESS DIRECTION FOR THE ENTRY OF JUDGMENT."

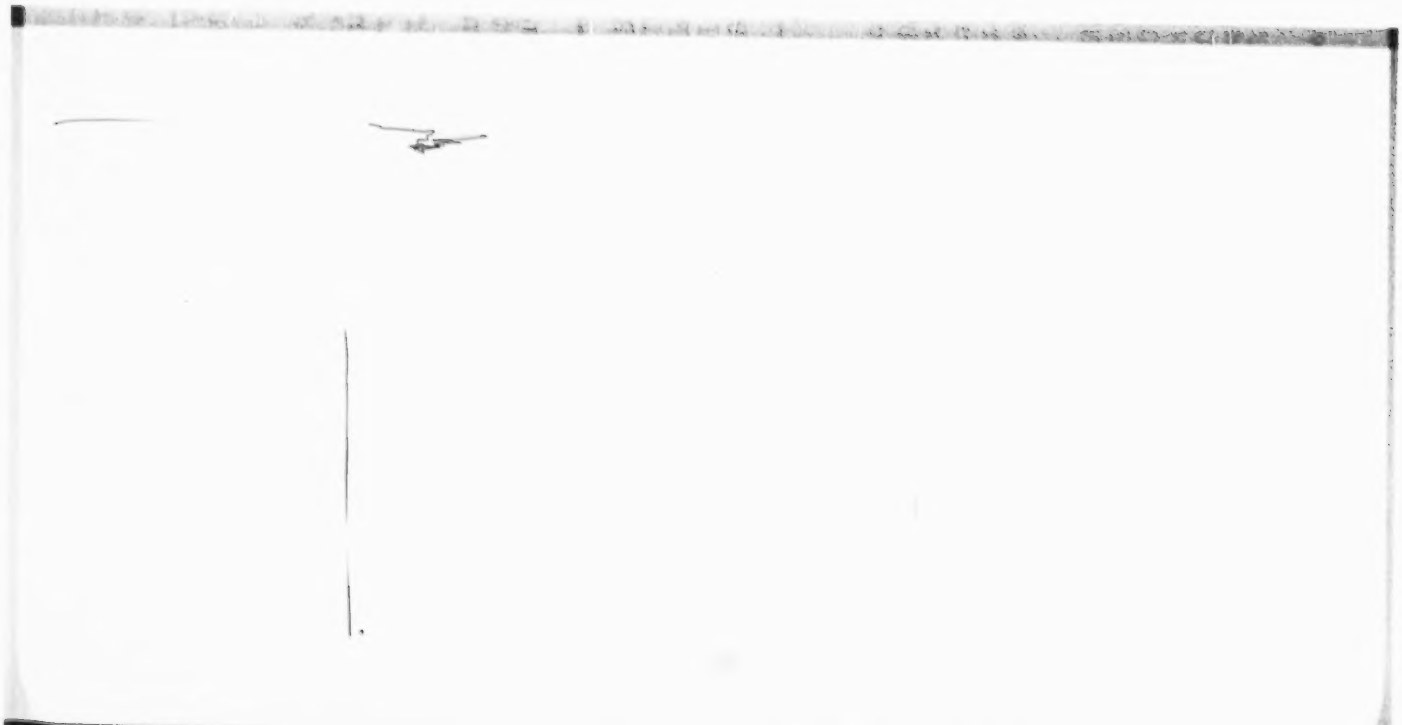
The record Appendix C1 is brazenly barren of the determination orders required by Rule 54. Without a doubt this court should rule that the order in the district court is INTERLOCUTORY and NOT FINAL for ALL PURPOSES including ENFORCEMENT and APPEAL.

VI. THE FACTUAL RECORD DOES NOT SUPPORT THE OPINION OF THE 9th CIRCUIT COURT OF APPEALS AND RESPONDENT's AFFIDAVIT FOR SUMMARY JUDGMENT IS A "BILL COLLECTORS MASTERPIECE"-TOTALLY IRRELEVANT

The Opinion of the 9th CA Appendix B1 is replete with conflicting and contradictory "snake talk" upon which the decision is purportedly based. Yet the record is clear and unequivocable. By examination of the complaint filed in the District Court, Appendix F1, this court may determine instanly for indeed a "bill collector's complaint" on a state judgment filed in federal court.

See how the 9th CA avoids the obvious thrust of this crucial point; Appendix B -4 .

"It is argued that the present action is one... arising out of a Calif judgment"



There is really nothing to"argue about" -- the action IN FACT is one upon a Calif. judgment Appendix F1.

Opinion 9th CA Appendix B-5 :

> "The claim here sued upon is only one step removed from a diversity action upon a tort"
>
> " The contacts must be related to the state court judgment and must not be weakened with time"

Here we see nine and seven years have gone by since the alleged "tort"(?) basis took place; an alleged tort that consisted of inabiility to post security cost bond under a statute challenged as unconstitutional and void. Further the judgement debt is a finality and entitity in itself and can carry back no relationship to prior events, Dragor, supra.

The Respondent's Affidavit in Support of Summary Judgment is totally irrelevant to the issues of personal jurisdiction and invalidity of the state judgment by denial of jury trial in state court and trial by judge disqualified by statute for prejudice all raised by Answer, Special Defenses and Counter-Claims.

The Respondent's Affidavit set forth in Appendix G1 may be called a BILL COLLECTOR'S MASTERPIECE. It is totally irrelevant, totally self-serving and grounds for reversing and remanding with instructions to dismiss the complaint.

CONCLUSION

This Court is asked to reflect upon the limitations on "activities" that are unconnected with the subject of suit or the parties or remote in time (McGee) and to reflect on the requirement for a three-judge court as set forth in the three counter claims all ignored by the district court and the violations of FRCP RULE 4c by failure to have service by US MARSHALL and violations of FRCP 21, 42, 54, and 56 and to declare the judgment below as void and without jurisdiction and to summarilly reverse with instructions to proceed on the counter-claims in accordance with the Federal Rules of Civil Procedure.

In the alternative probable jurisdiction should be noted to review on their merits the substantial federal questions at issue in this Petition.

Respectfully Submitted:

By_____

PETITIONER
STANLEY V. TUCKER

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGIE J. THRELKELD, Appellee. -v- STANLEY V. TUCKER, Appellant	No 72-1472
MARGIE J. THRELKELD, Appellee -v- STANLEY V. TUCKER, Appellant	No 72-1646

Before : DUNIWAY, KILKENNY, and GOODWIN
Circuit Judges

Appellant's petition for rehearing filed May 17, 1974 is Denied.

Dated: June 27, 1974

UNITED STATES COURTOF APPEALS

FOR THE NINTH CIRCUIT

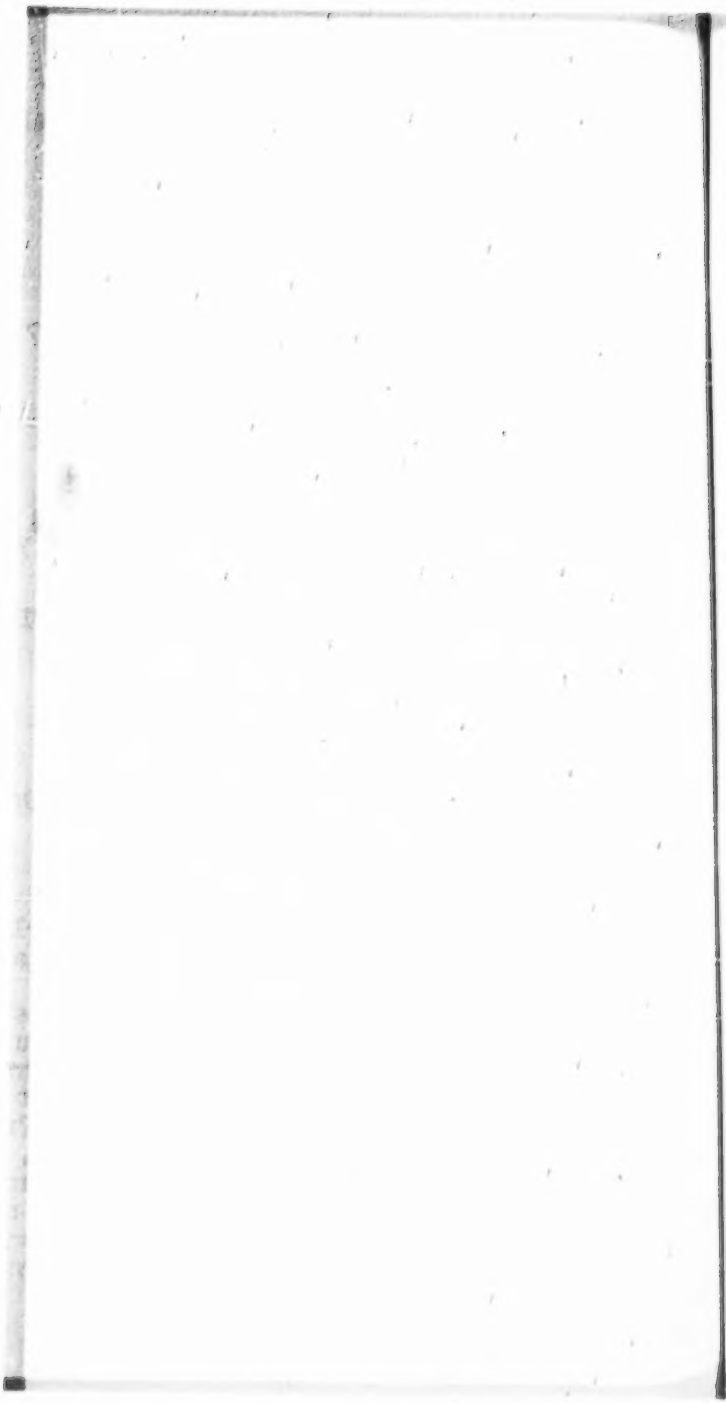
MARGIE J. THRELKELD, Appellee -v- STANLEY V TUCKER	No 72-1472
MARGIE J. THRELKELD, Appellee -v- STANLEY V. TUCKER, Appellant	No 72-1646 OPINION

Appeals from the United States District Court for the Central District of Calif.

Before: DUNIWAY, KIKKENNY and GOODWIN, Circuit Judges

GOODWIN, Circuit Judge:

Margie Threlkeld, formerly Margie Tucker, brought this diversity action upon a judgment for damages rendered by the California Superior Court against Stanley Tucker, a resident of Connecticut, in a state case, Tucker v Tucker (Threlkeld). The United States District Court granted Threlkeld summary judgment and Tucker has filed these appeals, contending, inter alia, that the district court lacked personal jurisdiction in an action upon a California judgment agsinst a nonresident who had no contacts with California after suffering the state judgment.



The state-court judgment was rendered upon Threlkeld's counterclaims for malicious prosecution in one of the numerous actions brought by Tucker against Threlkeld in the California state courts. The bringing of six of these actions by Tucker was found to be a species of malicious prosecution for which damages were assessed.

California's long-arm statute, S410.10 of the Code of Civil Procedure states:

> "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States"

The jurisdiction of the California courts is therefore coextensive with the outer limits of due process under the state and federal constitutions, as those limits have been defined by the U. S. Supreme Ct.

Tucker moved to California in 1956 and remainded there until 1961, when he moved to Connecticut. After leaving California, however, Tucker maintained an active interest in California. He visited the state several times a year, and filed more than 30 actions or proceedings in the California courts. Between 1965 and 1967 Tucker filed several actions against Threlkeld in the California state courts.

In 1968 Threlkeld, tiring of the activities of her litigious former husband, counterclaimed, in one of Tucker's actions, for malicious prosectuion. Tucker did not defend, and the judgment which is the subject of this case was entered against him in June of 1970.

Fourteen months later, having received nothing in payment of the jdugment, Threlkeld filed this action in federal court.

Since 1969 Tucker has been domiciled in Connecticut. When Threlkeld filed this action she caused Tucker to be served with process in conformity with California' out-of-state service of procedure. Tucker has neither appeared nor voluntarily submitted to the jurisdiction of the court. The question therefore is whether Tucker has carried on in California activity sufficient to furnish a jurisdictional basis for this action unter the "minimum contacts" doctrine of International Shoe v Washington. 326 US 310 (1945)

In Tucker v Tucker (Threlkeld) the state court had jurisdiction over Tucker because having instituted the action, he had submitted himself to the court's jurisdiction not only as to his own cause of act ion but also as to any counterclaim filed against him. Witnkin. 1 Cal Proc 2d Jurisdiction S 98. See also Adam v Saenger 303 US 59 (1938); United States of Mexico v Rask, 118 Cal App 21, 4 P 2d (1931) Moreover because of his deliverate and repeated utilization of the California courts amounted to "purposefully (availing himself) of the privilege of conducting activities within the forum state,"Tucker became subject to future long-arm jurisdiction in the courts of California in an action arising out of such conduct. See Hanson v Dnckla, 357 US. 235, 253 (1958). These same contacts

would satisfy personal jurisdiction if such a casw were brought in federal court, for Federal Rules of Civil Procedure 4 (e) and 4 (d) (7) instruct the federal courts to utilize the long-arm statute of the state within which the federal district court is located.

It is argued, however, that the present action is not one arising directly from Tucker's liability-producing conduct in California (repeated litigation), but rather is one arising out of a California judgment. Superficially this action is indistinguishable from any other action by a creditor whose claim has been reduced to judgment. It can be argued, then, that this action is not an action for malicious prosecution, but merely an action upon a judgment, Tucker's original contacts with California while sufficient to support the judgment are insufficient to support jurisdiction in an action upon that judgment.

Inasmuch as the federal courts are not appendages of the state courts, a federal court cannot enforce a state-court judgment without first independently establishing its own jurisdiction over the subject matter and parties. See United States v Potter, 19 F.R.D. 89 (S. D. N. Y. 1956); U.S. v Fairbank Realty Corp, 50 F Supp 373 (EDNY 1943), aff'd on other grounds, 142 F 2d 151 (2nd Cir 1944). Here diversity jurisdiction provides the basis for subject-matter jurisdiction, while the Tucker-initiated state lawsuit (resulting in the judgment sued upon in this action), viewed in the context of the other California contacts

discussed throughout this opinion, provides the basis for personal jurisdiction. We emphasize that this action is not an attempt to use a federal court or federal process to enforce a state judgment, nor is it a routine actior by a creditor seeking to use a feral court to obtain a judgment upon the creditor's local judgment against a nonresident defendant. The claim sued here upon is only one step removed from a diversity action upon a tort committed by the nonresident defendant in California, and it is closely related to an elaborate course of forum-related activities carried on by the defendant.

When the "minimum contacts" doctrine is the sole basis for jurisdiction, the claim sued upon must arise out of or be connected with the defendant's forum-related activities. Buckeye Boiler Co v Superior Court of Los Angeles County, 71 Cal 2d 893, 458 P 2d 62, 80 Cal Rpt 113, 118 (1969). The claim (judgment) here sued upon was connected with and arose out of Tucker's repeated vexation of his former wife in the Courts of California.

Where, as here, the action upon the judgment is brought within a reasonable time after the judgment was entered (in this case 14 months) and where the conduct underlying the judgment clearly evidenced a pattern of continued, deliberate contact with California, there is nothing unreasonable or contrary to "traditional noticons of faire play and substantial justice" (Int. Shoe v Washington, 326 US at 316) in subjecting the nonresident to the jurisdiction of a federal district

court in California cf Marra v Shea, 321 F. Supp 1140 (N. D. Calif 1971)

It is worth emphasizing the limits of our holding in this case. We do not hold that a valid state-court judgment by itself is sufficient basis for out-of-state service upon a nonresident defendant any time an action is brought upon that judgment in a federal court sitting in the state in which the judgment was entered. There must be a history of relevant contacts between the nonresident and the state. The contacts must be related to the state-court judgment, and must not have been weakened by the passage of time. For example, in this case we have relied primarily upon the fact that the defendant himself commenced the very action in which the judgment now sued upon was rendered. Further, that litigation was but part of a Tucker-initiated pattern of conscious and intentional utilization of the courts of the forum state. On these facts, there is no occasion to guard against the overreaching of a foreign debtor by a local creditor.

Tucker's other claims are either frivolous or barred by collateral estoppel. See Angel v Bullintton. 330 US 183 (1947)

The judgment of the district court is affirmed.

Dated: May 5th, 1974

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARGIE J. THRELKELD, Plaintiff -v- STANLEY V. TUCKER, Defendant	CA 71-2082-HP JUDGMENT

THIS CAUSE came regularly to be heard upon plaintiff's motion for summary judgment, and the court, having found there is no genuine issue as to any material fact herein, and having granted the motion, it is hereby

ORDERED, ADJUDGED and DECREED that plaintiff MARGIE J. THRELKELD recover from Defendant STANLEY V. TUCKER the sum of $46,852.50 with interest of 7% per annum thereon from June 26, 1970 in the further sum of $4,815.26, for a total judgment of $51,667.76 and plaintiff's costs.

Dated: December 13, 1971

HARRY PREGERSON
Unitd States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

MARGIE J. THRELKELD, Plaintiff -v- STANLEY V. TUCKER, Defendant.	Cv No 71-2082-HP ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE SUMMARY JUDGMENT

Defendant having filed with the court on January 10, 1972 a motion to set aside the summary judgment entered herein on Dec 12, 1971; and it appearing to the Court that there is no genuine issue as to any material face in this case and that plaintiff is entitled to judgment; and it further appearing to the Court that defendant's failure to submit either timely opposition to plaintiff's motion for summary judgment or a timely application to continue the hearing on plaintiff' motion for summary judgment was not the result of excusable neglect; and it further appearing to the court that no other reasons exist that would justify relief from the operation of the judgment entered herein against defendant;

IT IS ORDERED THAT Defendant's motion is denied.

Dated: January 24, 1972

HARRY PREGERSON
United States District Judge

CALIFORNIA CIVIL CODE OF PROCEDURE

CCP Section 170: "No justice or judge shall sit or act as such in any action or proceeding:

(5) when it is made to appear probable that, by reason bias or prejudice of such justice or judge a fair and impartial trial cannot be had before him"

CCP Section 170.6: "Prejudice against a party or attorney.

(1) No judge or court commissioner or any court of the state of California shall try any civil.....matter nor hear any... contested matter .. when it shall be established as hereinafter provided that such judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in such action or proceeding."

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JEAN NEAL, ET AL Plaintiff -v- STANLEY V. TUCKER Defendant	No 50745 DECLARATION DISQUALIFYING THE HON. ROBERT R. WILLARD PURSUANT TO CCP 170.6

The undersigned, Stanley V. Tucker, hereby declares:

1. That he is the defendant in this case.

2. That the Hon. Robert R. Willard to whom the instant case may be assigned is so biased against man as against woman and against father as against mother and against Defendant in this instant case and so biased or prejudiced in his understandings of rights and duties between Father and Child and Mother and Child so that affiant believes he cannot have a fair and impartial trial or hearing before said Judge.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOINS IS TRUE AND CORRECT TO THE BEST OF MY KNOWLDGE AND BELIEF.

Executed at Los Angeles, CaliforniaSept Sept 3, 1968

STANLEY V. TUCKER

AFFIDAVIT OF SERVICE BY MAIL

State of Connecticut)
County of Hartford) ss

I, STANLEY V. TUCKER, do hereby state that I have on this 18th day of Sept 1974 served three copies of the within Petition for Certification in Tucker v Threlkeld on the Respondent by mailing postage prepaid first class and by depositing in the U. S. mail box at Hartford, Conn this date addressed as follows:

Robert R. Anderson, Esq
621 E. Main
Santa Paula, California

By_____/STANLEY V. TUCKER
Sworn to and subscribed to before me this 18thday of Sept 1974.

_____/ Notary Public

My commission expires_____